

REMARKS

Applicant has not amended the claims in this response.

Claims 2-4 and 10-20 were cancelled in prior responses.

Claims 1 and 5-9 are currently pending in the application.

Claims Rejections – 35 USC § 103

(A) Claims 1, 5, 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,706,306 to Berger et al. (“Berger”).

This rejection is respectfully traversed.

Of the claims rejected, claim 1 is independent, with the remaining claims dependent thereon.

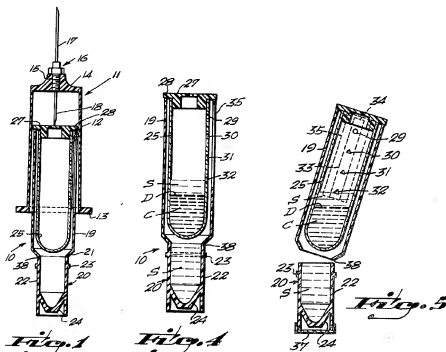
Claim 1 recites among other things an assembly with the following features:
*an elongate tubular housing having opposed first and second ends; and
a solid partition forming a closed bottom positioned within said housing between said first and second ends;.....
said housing defining a volume for specimen collection and containment therein between said first end and said partition;
said second end forming a false bottom comprising a bottom end below said partition,
said bottom end comprising an annular skirt and a semi-spherical bottom.*

Applicant submits that Berger fails to disclose, teach or suggest at least the claimed features of:

- (a) a solid partition,
- (b) a false bottom, and
- (c) a semi-spherical bottom.

The Examiner proposes that Berger discloses an elongate tubular housing (19) having opposed first and second ends, a solid partition (25) forming a closed bottom positions within said housing between the first and second ends, said housing defining a volume for specimen collection and containment therein between said first end and said partition (column 3, lines 55-60), said second end forming a false bottom comprising a bottom end below said partition comprising an annular skirt (side walls of tube 19) and a semi-spherical bottom comprising an opening (at 38) therein (see column 5, lines 30-35).

Applicant respectfully points out that Berger teaches a blood collecting tube (25) coaxially disposed in a cylindrical housing member (19) with the open end of the tube (25) sealed by a cap member (27) (see Figs. 1, 4 and 5 of Berger shown below).



Furthermore, Berger teaches that it is essential to have a plurality of through openings (29, 30, 31 and 32) in the sidewall of sample collecting tube (25), so that the separated serum sample can flow through openings (29, 30, 31 and 32) and trickle down cylindrical housing member (19) into specimen cup (20) (see Col. 5 lines 3 to 26).

Thus, the tube (25) of Berger is not a solid partition as claimed in the present invention and there is no suggestion in Berger whatsoever to have a solid partition, within the cylindrical housing member (19). In fact, the presence of a solid partition would destroy the function of Berger.

In addition, there is no suggestion in Berger to have a false bottom, as a serum sample can flow from tube (25) to separation cup (20) the sample can be present in cylindrical housing member (19).

Therefore Berger fails to teach a false bottom. Conversely the use of a false bottom in Berger would render the tube inoperable.

Furthermore Berger teaches that the lower end of housing member (19) is coaxially joined to a specimen cup (20) through a short frusto-conical connector wall portion (21) (see Col. 5 lines 3 to 26) and as such does not have semi spherical bottom.

In addition there is no suggestion in Berger to have a semi-spherical bottom at the base of housing member (19).

Accordingly, it is submitted that the container assembly as defined by claim 1 is not taught or suggested by Berger. In addition, claims 5, 6 and 9 being dependent on claim 1 are likewise patentable over the cited reference.

(B) Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berger as applied to claim 1 and further in view of U.S. Patent No. 5,458,854 to Burns ("Burns").

These rejections are respectfully traversed.

Berger fails to disclose, teach or suggest the invention of claim 1 for the reasons as discussed above.

Burns is cited for use of a thermoplastic material.

Applicant submits Burns fails to disclose, teach, or suggest the claimed assembly of claim 1 as discussed previously and does not remedy the shortcomings of Berger. In addition, claims 7 and 8 being dependent on claim 1 are likewise patentable over the cited references.

Conclusion

In view of the remarks herein, applicant submits the claims are patentably distinct over the prior art and allowable in form.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication or credit any overpayment to Deposit Account No. 02-1666.

If the Examiner has any questions or comments relating to the present application, he or she is respectfully invited to contact Applicant's agent at the telephone number set forth below.

Respectfully submitted,

/Mark Lindsey/

Mark Lindsey
Registration No. 52,515
Agent for Applicant(s)
201 847 6262

Dated: October 31, 2008.

Becton, Dickinson and Company
1 Becton Drive, MC110
Franklin Lakes, New Jersey 07417-1880

Doc# 147288v1